United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: October 1, 1996

TO : Ralph R. Tremain, Regional Director
Region 14

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

512-5006-5080

SUBJECT:
Entergy Systems & Services, Inc.
Case 14-CA-24144

This case was submitted for advice as to whether the Employer violated Section 8(a)(1) by changing its practice of running help-wanted newspaper advertisements giving its name to placing blind ads omitting its name.

FACTS

The Employer has been the subject of an organizing campaign by Local 1, IBEW (the Union). That campaign has resulted in the filing of several unfair labor practice charges and a representation petition.[1]

On January 14, 1996, the St. Louis Post-Dispatch ran an advertisement for an electrician with two to four years of experience, stating that supervisory experience would be useful. The ad stated that replies should be sent to "Electrician" at a newspaper reply box; the employer that had placed the ad was not identified.

An employee of the Employer, sent a resume in response to the blind ad. Lisa Tershak, then the administrative assistant to the Employer's Operations Manager, told the employee that she had received his resume. When the employee complained that the ad was not accurate because he did not believe that the Employer had jobs requiring the supervisory experience listed in the ad, Tershak replied, "The only reason we put an ad in the newspaper like that is so we don't have 200 to 300 applicants from the Union showing up at our door on Monday." In the past, the

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[1] The precise facts concerning the unfair labor practice charges and the representation petition are not relevant to this charge.

Employer would include its name in newspaper advertisements and request that applicants apply directly to the Employer.

The Region has concluded that Tershak was an agent of the Employer when she made the statement quoted above. The Region has also concluded that there is no merit to the Section 8(a)(3) allegation in the charge because the Employer did not hire any employees in response to the newspaper advertisement.[2]

There is no claim that the Employer, although the target of a Union organizing campaign, has ever been confronted by large numbers of Union applicants.[3]

ACTION

We conclude that a Section 8(a)(1) complaint should issue, absent settlement.

Initially, we note that the Employer's use of the blind advertisement, instead of an advertisement bearing its name, is not, standing alone, unlawful.[4] Moreover, the blind newspaper ad did not prevent Union employees from applying for employment with the Employer,[5] even though such

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[2] The Employer did hire one supervisor as a result of the advertisement.

[3] Cf. Zurn Nepco, 316 NLRB 811, 815 (1995).

[4] See Donald A. Pusey, Inc., Cases 4-CA-22774 et al., Advice Memorandum dated June 27, 1995, at p. 7. Compare Tualatin Electric, Inc., 319 NLRB 1237 (1995) (employer violated Section 8(a)(1) by instituting "moonlighting" policy prohibiting employees from receiving compensation from any other source because purpose of policy was "to prevent or eliminate the employment of 'salts'").

[5] Cf. New Breed Leasing Corp., 317 NLRB 1011, 1024 (1995) (successor employer attempting to avoid hiring a majority of its employees from employees of the predecessor misled predecessor employees into thinking they would be considered for employment while running blind newspaper advertisements for new hires); Love's Barbeque Restaurant,

a blind ad might make it harder for the Union to gather information to support a charge alleging that the Employer had unlawfully refused to consider or hire Union applicants.

However, it is clear from the statement of Lisa Tershak, the Employer's agent, that the Employer used the blind advertisement as a tactic intended to make it difficult for Union organizers or supporters to learn that the Employer was hiring and therefore apply for employment by the Employer.[6] In this regard, we note that there is no evidence to justify Tershak's statement that the Employer feared that it would be the target of mass applications should it continue to run newspaper ads containing its name. Thus, Tershak's statement reveals that the Employer changed its advertising and recruiting process solely to impede the Union's organizing campaign.[7] Accordingly, the Employer's

change in its advertising practice was unlawful.[8]

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245 NLRB 78 (1979), enfd. in relevant part sub nom. Kallmann v. NLRB, 640 F.2d 1094 (9th Cir. 1981).

[6] See cases cited in fn. 5, above.

[7] See, e.g., WestPac Electric, Inc., 321 NLRB No. 172, ALJD at 37-38 (1996) (employer violated Section 8(a)(1) by changing from one-page to six-page job application form to identify and prevent hiring of union salts); Martinson Electric Co., 319 NLRB 1226 (1995) (employer that had previously accepted job applications violated Section 8(a)(3) and (1) by changing its practice to hire through a labor contractor and a state employment services agency in order to avoid having to deal directly with union applicants); Donald A. Pusey, Inc., supra at pp. 7-8 (after union began salting campaign, employer ceased accepting applications in person and began to screen applicants by telephone to identify and reject union applicants without creating written evidence of discrimination in hiring).

[8] Compare Aey Electric, Inc., Cases 8-CA-26606 and -26651, Advice Memorandum dated December 8, 1994 (employer did not violate Act by ceasing to accept unsolicited resumes and

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starting to accept resumes only when it had job openings where there was no independent evidence of employer animus and employer had hired one employee from a union shop).